

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

DOUGLAS J. HORN and CINDY HARP-HORN,

Civil Action No.:

15-cv-701 FPG/MJR

Plaintiffs,

-against-

AFFIDAVIT OF ELLEN VOIE

MEDICAL MARIJUANA, INC., DIXIE ELIXERS AND
EDIBLES, RED DICE HOLDINGS, LLC and
DIXIE BOTANICALS

Defendants.

STATE OF WISCONSIN

COUNTY OF PORTAGE

BEFORE ME, the undersigned authority, personally appeared Ellen Voie who, after first being duly sworn, deposes and says:

1. My name is Ellen Voie.
2. Annexed hereto as Exhibit “i” is a copy of Plaintiff’s Expert Rebuttal Disclosure disclosing me as an expert in this case, along with its Exhibit: the results of the study on “Crime Prevention for Truckers.”
3. Since March, 2007, I am the founder, President and Chief Executive Officer of the Women in Trucking Association (“WIT”). I am an internationally recognized speaker and authority on gender diversity and inclusion of women working in the trucking industry.
4. The Women In Trucking Association was formed to promote the employment and accomplishments of women in the trucking industry and to remove obstacles that might keep them from succeeding.
5. Specifically, consistent with our mission, the people of WIT to:

- a. Educate and raise awareness for women's issues;
- b. Promote career opportunities for women in the industry;
- c. Improve conditions for women already working in the industry;
- d. Increase the number of women in leadership positions in the industry;
- e. Increase the number of women drivers;
- f. Serve as a resource about women working in the industry;

6. I understand that one of the defendants' defenses in this case is that plaintiff Cindy-Harp Horn, the wife of plaintiff Douglas Horn, voluntarily resigned her employment once her husband and co-team driver of fourteen (14) years was fired, that she could have sought other employment in trucking, and thereby had no damages. I also understand that plaintiff Cindy Harp-Horn states that she had to resign due to her husband's firing, and could not continue in trucking going forward.

7. In my opinion, based upon my vast experience and knowledge on this issue spanning over 12 years advocating for women in trucking, Ms. Harp-Horn's resignation after 14 years as a co-team driver, and her inability to continue in trucking was entirely reasonable and expected under the circumstances of her husband's firing and ban from the trucking industry in October 2012.

8. From our research at WIT, in the Fall of 2017, women made up less than 8% of all truck drivers. An even smaller subset of that figure is comprised of "co-team" drivers, such as plaintiffs here, where two people share responsibilities over the road. Plaintiffs were a husband and wife team and were paid based upon their combined yet inseparable work on their numerous trips. In October, 2012, women occupied far less than 8% as drivers. Of that small percentage of women in trucking, even less women drive as solos. The lion's share of women truckers are only able to work in a team configuration, and not as solos. Because of the daily rigors and requirements of the job, women are an overwhelming minority in solo truck driving. There are clear reasons for the absence of women in trucking and especially six years ago when Douglas Horn was fired.


9. While there are many attractions for men in the trucking industry, there are a number of intimidation factors for women. Namely, the operation of equipment, safety on the road while driving and stopped, getting a license, work schedule and hours, and the periodic interaction with other drivers who are mainly male. To suggest that a woman can simply pick up a solo job in trucking goes against the grain of the twelve (12) years of research and monitoring of women in trucking by WIT.

10. Most disturbingly, in a recent survey, women truckers were asked how safe they feel. The result was a score of 4.4 out of 10. Again, this number was even less in October, 2012.

11. On the technology side, we are working on developing an App for drivers to rate locations in regard to safety (truck stops, rest areas, shippers, etc.). But this is only now after years. In October, 2012, there was much less monitoring for safety for women drivers and women in the profession generally.

12. The defendants argument that Cindy Harp-Horn could have continued working as a solo, or in another capacity without her co-team driver is wishful thinking and not consistent with our years of research and monitoring of women in the trucking industry. The fact is that, by and large, women do not feel safe working as solo truckers, and do not feel that they can easily handle the daily rigors of the job. Not surprisingly, such was the case with plaintiff Cindy Harp-Horn here.

13. If called to testify, I will do so consistent with the above.

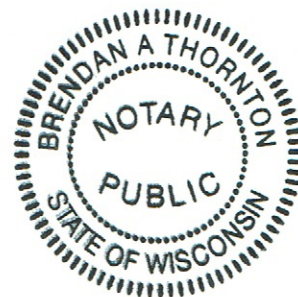


Ellen Voie

Dated: November 6th, 2018

Subscribed and Sworn to before me this
6th day of November, 2018.

Brian A. Thornton
Notary Public



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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DOUGLAS J. HORN and CINDY HARP-HORN,

Plaintiffs,

-against-

MEDICAL MARIJUANA, INC.,
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DIXIE BOTANICALS,

Defendants,
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**PLAINTIFF'S REBUTTAL
EXPERT DISCLOSURE**

COUNSELORS:

PLEASE TAKE NOTICE, that pursuant to FRCP 26(a)(2)(C) plaintiffs, DOUGLAS J. HORN and CINDY HARP-HORN, provides expert disclosure as follows:

1. Plaintiff intends to call Ellen Voie at the time of trial as a rebuttal expert witness.
2. Ellen Voie is the President and CEO of the Women in Trucking Association, P.O. Box 400, Plover, Wisconsin 54467.
3. The subject matter on which Ms. Voie is expected to testify are the issues of safety and prevalence of women truck drivers who drive solo and/or in a team configuration.
4. A summary of the facts and opinions to which Ms. Voie will testify are in the Crime Prevention for Truckers research study for female truckers annexed hereto as Exhibit "A."
5. Plaintiff reserves the right to supplement and/or amend the instant disclosures at a later time pursuant to the FRCP.

Dated: Great Neck, New York
October 30, 2017

KUPILLAS, UNGER & BENJAMIN, LLP.

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Crime Prevention for Truckers Statement of Work

Section 1: Purpose

The purpose of this research study is to determine the prevalence of threats and assaults against minority and female truckers and gather information on places, days of the week, and times that they occur to understand how serious the problem is and decide whether it needs to be addressed nationwide.

Section 2: Background

At the 2015 Mid-America Trucking Show (MATS), representatives from “Women in Trucking” (a nonprofit association) suggested that the Federal Motor Carrier Safety Administration (FMCSA) develop crime prevention measures for truckers. This same suggestion was discussed during a subsequent teleconference with Women in Trucking. FMCSA currently does not provide materials or training to truckers, particularly minority and women truckers, on how to protect themselves from being stalked, harassed, assaulted, or robbed.

About 200,000 truck drivers are female; the number of minority truckers are not known. Many minority and female truck drivers do not personally feel safe when on duty for two main reasons: (1) they are subject to harassment (harassment is verbal or physical assault due to the victim’s gender, race, ethnic background, country of origin, religion, or creed) by non-minority drivers (including colleagues in the training setting or verbal accosting over citizens band [CB] radio), and (2) they are vulnerable to assault when taking a rest break or stopping for fuel or other reasons. Companies often have common keys that leave all cabs accessible by all company employees at any time, which can make personal security during rest difficult for women. Additionally, rest areas are often dimly lit and may include unknown risks to personal security.

Notwithstanding, before any effective solutions to reducing harassment and assaults against women truckers can be developed and implemented, there needs to be an understanding of the prevalence, seriousness, and nature of the problem of harassment and assaults against truckers. Very little data is known to exist on the prevalence and nature of the problem, such as where and when these incidents occur. We also do not know how frequently harassment takes place and how many assaults are unreported and the reasons why.

The final deliverable in this project will be a final report that provides data on the prevalence and nature of harassment and assaults against minority and female truckers and how many of these threats and assaults go unreported and why.

FMCSA is authorized to undertake this project under 49 USC 31108 [Section 4111 of SAFETEA-LU (P.L. 109-59)], “Motor Carrier Research and Technology Programs.” Under 49 USC 31108, paragraph (a)(3)(C), FMCSA may fund research, development, and technology projects that improve the safety and efficiency of commercial motor vehicle operations through technological innovation and improvement.

Section 3: Tasks

This effort consists of the following tasks: (1) project plan, (2) literature review, (3) design of data collection, (4) information collection request and Institutional Review Board, (5) implementation of survey, (6) data analysis, (7) final report and (8) Publicly Available Data Set. These tasks are discussed in detail below.

Task 1: Project Plan

The Contractor shall finalize the project plan (a draft project plan was submitted with the bid proposal) with a milestone schedule showing deliverables and due dates (using the contract award date as the reference point). The draft project plan should be consistent with the schedule of deliverables shown in Section 4. The Contractor shall travel to U.S. Department of Transportation (USDOT) headquarters to present and discuss the project plan at a kick-off meeting within 14 days of contract award for review and approval by the FMCSA Contracting Officer's Representative (COR). The Contractor shall address any issues or comments on the project plan within one calendar week of receiving issues or comments from the FMCSA COR and submit the revised project plan to the FMCSA COR for approval.

The Contractor will adhere to the approved final project plan during the period of performance. Delays are discouraged but may be permissible due to unforeseen circumstances beyond the Contractor's control. Such a delay must be requested in writing (e-mail is permissible) by the Contractor and approved by the COR. If the period of performance must be extended, the Contracting Officer must approve modification of the contract to extend the period of performance.

Task 2: Literature Review

The Contractor shall perform a review of the published literature to ascertain if there have been any studies on the prevalence and nature of crimes involving threats and assaults against minority and female truckers. The Contractor shall submit an interim report summarizing the results of the literature review, which includes an annotated bibliography of such past studies and any lessons learned about or recommendations for collecting or analyzing data on this issue.

The Contractor shall submit the draft interim report to the COR for review in accordance with the schedule of deliverables. The COR shall respond with review comments, and the Contractor shall address the COR's review comments, revise the draft report as necessary, and submit a second draft literature review report in accordance with the schedule of deliverables.

Task 3: Design of Data Collection and Analysis

Building upon the literature review as a foundation, the Contractor shall develop a plan for collecting and analyzing nationwide data on the prevalence of crimes involving threats and assaults against minority and female truckers. The Contractor shall refer to the FMCSA resource guidelines (available at <https://www.fmcsa.dot.gov/research-and-analysis/research/source-guidelines-and-standards-conducting-and-managing-fmcsa>) for conducting research and include in the data collection and analysis plan a description of which guidelines are most relevant for the type of study to be conducted and how the study will meet those guidelines. The Contractor shall design a plan to collect and analyze such data to ascertain the following when such data are available:

- Particular type of offense (e.g., threat, verbal accosting, physical (non-sexual) assault, sexual assault, battery, and vandalism)
- Times when such crimes are committed (e.g., month of the year, day of the week, time of day).
- Locations where such crimes are committed (e.g., fueling stations, truck terminals, shipping docks, maintenance facilities, public streets, empty lots).
 - Breakdown of the characteristics of the place (e.g., presence of people movement, lighting conditions, presence of surveillance equipment [cameras], presence of security alarm boxes, presence of a security guard, urban or exurban setting).
 - If the place was a place of employment, was there a policy in place against harassment
- Characteristics of the perpetrator:
 - Relationship of perpetrator to victim (e.g., trucker, trainer, mechanic, stranger vs. non-stranger).
 - Physical characteristics (e.g., age, race, ethnic background).
 - Breakdown of recidivism of threats or assaults against minority and female truckers or any other criminal offenses against women, or any other criminal offenses in general.
- Characteristics of the victim:
 - Physical characteristics (e.g., age, race, ethnic background).
 - Breakdown of awareness of clues or precursors to criminal activity (e.g., assessment of risk prior to leaving truck cab, threat made before assault, stalking before assault).
 - Breakdown of awareness of self-protection measures or training in self-defense.

In the data collection and analysis plan, the Contractor shall also obtain an estimate for the number or percentage of crimes involving threats or assaults against minority and female truckers that goes unreported across the Nation. To do this, the Contractor will survey a sample population (a statistically significant sample) of minority and female truckers and ask them if they have been threatened or assaulted. If so, the survey will ask whether victims have reported the incidents to law enforcement officials, and if they have not reported the incidents, the survey will ascertain the reasons why. The Contractor will be required to design such a survey. If a statistically significant sample is not possible to attain, the Contractor shall explain the reasons and alternatives to getting as close as possible a statistically significant sample or representative

sample. The Contractor shall articulate the survey questions to be asked and describe the survey methodology (e.g., Web-based; interviews at truck stops, fueling stations, and truck shows; telephone calls). The Contractor shall avoid collecting any personally identifiable information (PII). To avoid repeat participants, the surveyor or survey form shall simply ask whether the participant has previously taken this survey.

The Contractor shall transmit a copy of the draft data collection and analysis plan to the COR for review in accordance with the schedule of deliverables. The COR shall respond with review comments; the Contractor shall address the COR's review comments and revise the draft plan as necessary to produce a second data collection and analysis plan.

The Contractor shall convene a peer review panel at FMCSA headquarters in Washington, D.C. to evaluate the second draft data collection and analysis plan. The peer review panel shall consist of four persons, as follows: a representative from Women in Trucking, a representative from Conference of Minority Transportation Officials, a subject matter expert in statistical analysis, and a subject matter expert in crime data collection and analysis. All four peer reviewers shall be approved by the COR, and all four peer reviewers must not possess any apparent or potential conflict of interest (financial or otherwise). The Contractor shall defray the reasonable (not to exceed Federal government per diem rates) costs for travel expenses for all three peer reviewers and pay a reasonable honorarium for each peer reviewer.

The Contractor shall prepare a table listing each peer reviewer's comment, the location in the second draft plan that is the focus of the comment, and a description of how the comment was addressed or resolved. The Contractor shall submit this table, revise the second draft plan to address the review comments of the peer reviewers, and submit the third draft plan to the COR in accordance with the schedule of deliverables. The COR shall review the table and the third draft plan and instruct the Contractor if any additional revisions are needed. The Contractor shall make any necessary revisions and submit the final data collection and analysis plan.

Task 4: Information Collection Request and Institutional Review Board

As mentioned in Task 2, the Contractor shall design a survey to obtain an estimate for the number or percentage of crimes involving threats or assaults against minority and female truckers that go unreported across the Nation. The Contractor will submit a protocol for the survey to an approved Institutional Review Board (IRB). The protocol will include all necessary documentation required to conduct this survey. Upon receipt of IRB approval, the contractor will provide documentation of the approval to FMCSA.

The Contractor will prepare an information collection request (ICR) to obtain Office of Management and Budget (OMB) approval for the survey portion of the data collection plan. The Contractor will work with FMCSA to prepare all necessary documentation needed to obtain FMCSA, Bureau of Transportation Statistics (BTS), and OMB approval of this survey effort. The Contractor will work with FMCSA to respond to feedback from BTS and OMB to help ensure that the survey process is approved. The OMB review and approval process should be completed by 18 months from the date of contract award.

Task 5: Implementation of Survey

The Contractor shall address any revisions required by the approved IRB, BTS, and/or OMB in the survey portion of the data collection and analysis plan before implementing the survey. The Contractor may offer an incentive (e.g., a nominal-value gift card) for the minority and female truckers who participate in the survey. The Contractor's surveyors conducting one-on-one in-person or telephone interviews shall be minorities and females. The one-on-one person interviews shall be at a minimum of four representative places in the Nation, preferably one in the north, one in the south, one in the west, and one in the east.

Task 6: Data Analysis

After the survey has been implemented and all data have been collected, the Contractor shall analyze the data in accordance with the data collection and analysis plan.

Task 7: Final Report

The Contractor shall compile the results of data collection and analysis along with a description of the study purpose, background, summary of the literature review, and methodology into a draft final report.

The Contractor shall transmit a copy of the draft final report to the COR for review in accordance with the schedule of deliverables. The COR shall respond with review comments; the Contractor shall address the COR's review comments and revise the draft report as necessary to produce a second draft final report.

The Contractor shall convene a peer review panel at FMCSA headquarters in Washington, D.C. to evaluate the second draft final report. The peer review panel shall consist of the same four persons as in Task 3 for review of the data collection and analysis plan. The Contractor shall defray the reasonable (not to exceed Federal government per diem rates) costs for travel expenses for all three peer reviewers and pay a reasonable honorarium for each peer reviewer. Anticipated travel locations: Travel locations include USDOT HQ in Washington, DC and truck stops and truck fueling stations in the US to be suggested by the contractor with final selection determined in consultation between contractor and FMCSA COR.

The Contractor shall prepare a table listing each peer reviewer's comment for the second draft final report, the location in the report that is the focus of the comment, and a description of how the comment was addressed or resolved. The Contractor shall submit this table, revise the second draft final report to address the review comments of the peer reviewers, and submit the third draft final report to the COR in accordance with the schedule of deliverables. The COR shall review the table and the third draft report and instruct the Contractor if any additional revisions are needed. If additional revisions are needed, the Contractor shall revise the third draft final report accordingly and submit the final report. For the final report, the Contractor shall meet the acceptance criteria described in Section 8 of this statement of work.

Task 8: Publicly Available Data Sets

RFQ MC-RRT-17-312-0014

Data sets that have been processed and reduced during this project shall be developed into de-identified data sets that are made publicly available. This requirement is outlined in the policy memorandum from the Office of Science and Technology Policy “Increasing Access to the Results of Federally Funded Scientific Research” dated February 22, 2013 available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf

In the public use dataset, all personal identification information (PII) [PII should not have been collected but it could have been collected inadvertently] shall be removed including names of drivers, names of fleets, and other relevant variables. If necessary, other methods of protecting privacy shall be utilized such as top-coding, bottom-coding, data swapping, or applying differential privacy techniques to protect study participants while still facilitating public use files. It is important to note that a public use data set represents a subset of the complete (raw) data set. Therefore, before a public use data set can be developed, the complete data set (including PII) from the study must be completed.

For further guidance on public use data sets, see the memorandum from the Office of Management and Budget “Sharing Data While Protecting Privacy” (M-11-02 of November 3, 2010) available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2011/m11-02.pdf>. Additional information regarding Department of Transportation (DOT) Public Access is available at <http://ntl.bts.gov/publicaccess/> and <http://ntl.bts.gov/publicaccess/howto comply.html>. Examples of constructing and maintaining public use data sets are available from the National Science Foundation at <http://www.nsf.gov/statistics/data-tools.cfm#micro-data>.

At the end of the study, the Contractor shall deliver the complete dataset (including PII) and the public use dataset (excluding PII) to a repository designated by the COR. All the datasets shall be documented with general information about the study as well as descriptions of each table and variable in the dataset. The documentation shall also include a description of the relationships of the tables in the dataset.

Section 4: Schedule of Deliverables

Deliverable	Due (Weeks or Months) from Date of Award
Draft project plan and kick-off meeting	2 weeks
Final project plan	3 weeks
First draft of literature review report	2 months
Second draft of literature review report	3 months
First draft of data collection and analysis plan	4 months
Second draft of data collection and analysis plan	4.5 months
Peer review of data collection and analysis plan	5 months
Obtain Institutional Review Board approval of survey protocol	7 months (tentative)
Obtain BTS approval of survey protocol	9 months (tentative)
Obtain OMB approval of survey protocol	24 months (tentative)
Implement survey	26 months
Complete survey and conduct analysis	32 months
Submit first draft final report	34 months
Submit second draft final report	34.5 months
Peer review of second draft final report	35 months
Submit third draft final report	35.5 months
Submit final report and Delivery of Publicly Available Dataset to the Data Repository	36 months

Section 5: Period of Performance

The services contained within the Statement of Work are considered non-severable, therefore the period of performance shall run thirty-six (36) months after the date of award.

Section 6: Monthly Progress Reports

The Contractor shall submit to the COR a progress report due on the 15th of the month after the first calendar month being reported on, and on the 15th of every month thereafter until the end of the period of performance. The Contractor shall prepare a progress report describing the work completed during the performance period, the work forecasted for the following period, and the names, titles, and number of hours expended for each of the Contractor's professional personnel assigned to the contract, including officials of the Contractor. The first report shall include details of any issues or problems that need to be resolved. The report shall also include any additional information—including findings and recommendations—that may assist the Government in evaluating progress under this contract.

Section 7: Payment of Invoices

Payment of invoices shall be based on submission of the monthly progress reports (see above) and receipt of deliverables by the COR in accordance with the schedule in Section 4. Payment of an invoice may be delayed until a delayed deliverable is received.

Section 8: Acceptance Criteria for Reports

The draft final and final reports submitted as deliverables in the aforementioned tasks shall conform to FMCSA's template for final reports. This template incorporates much of the guidance contained in the Federal Highway Administration's (FHWA's) *Communication Reference Guide* of February 2017, FHWA-HRT-15-058, available at <https://www.fhwa.dot.gov/publications/research/general/15058/>. The COR will provide the FMCSA template for final reports at the kick-off meeting. The final report must be Section 508-compliant because it will be published.

Section 9: Restrictions Against Disclosure

The Contractor shall not disclose the information obtained during the performance of this statement of work to the public without prior authorization from COR. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein (i.e., on a "need to know" basis). The Contractor agrees to immediately notify the COR in writing in the event that the Contractor determines or has reason to suspect a breach of this requirement. The Contractor agrees to insert the substance of this above clause in any consultant agreement or subcontract hereunder.

	A	B	C	D	E
1	Crime Prevention for Truckers – Price Matrix				
2	Period of Performance: 36 Months		Firm Fixed Price		
3	TOTAL ESTIMATED COST				
4					
5	CLIN	DESCRIPTION		EST. HRS	EST. COST
6		1 Direct Labor			
7		Senior Statistician		175	
8		Senior Data Analyst		175	
9		Junior Data Interviewer		450	
10					
11		2 Services/ODC			24,000.00
12					
13		3 Travel			35,000.00
14					
15	TOTAL				
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